

# INDEX

	Page
Opinions below .....	1
Jurisdiction .....	1
Questions presented .....	2
Constitutional provision and statute involved .....	2
Statement .....	4
Argument .....	15
Conclusion .....	25

## CITATIONS

### Cases:

<i>Burke v. Kern</i> , 287 N. Y. 203 .....	21
<i>City of Los Angeles v. Borax Consolidated</i> , 102 F. (2d) 52 .....	24
<i>City of New York v. Village of Lawrence</i> , 250 N. Y. 429 .....	22
<i>Economic Power &amp; Construction Co. v. City of Buffalo</i> , 195 N. Y. 286 .....	21, 22
<i>Helvering v. Stuart</i> , Nos. 49 and 48, decided November 16, 1942 .....	17
<i>Klaxon Co. v. Stentor Co.</i> , 313 U. S. 487 .....	24
<i>Matter of Petition of United States</i> , 96 N. Y. 227 .....	22
<i>Moore v. Mayor</i> , 73 N. Y. 238 .....	23, 24
<i>Posadas v. Warner, Barnes &amp; Co.</i> , 279 U. S. 340 .....	21
<i>Richfield Oil Corp. v. City of Syracuse</i> , 287 N. Y. 232 .....	22
<i>Willis v. City of Rochester</i> , 219 N. Y. 427 .....	22

### Federal Statute:

Act of July 3, 1930, c. 846, 46 Stat. 860 .....	10
-------------------------------------------------	----

### State constitution and statutes:

Constitution of New York, Article III, Section 16 .....	2
Act of February 27, 1931, ch. 39, N. Y. L. 1931 .....	2, 3, 19

### Miscellaneous:

3 McQuillin, <i>Municipal Corporations</i> (2d ed. 1928) Sec- tions 1357, 1358 .....	24
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(I)



# In the Supreme Court of the United States

OCTOBER TERM, 1942

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No. 793

THE CITY OF NEW YORK, PETITIONER

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND  
CIRCUIT*

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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## OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 384-405) is reported in 45 F. Supp. 226. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 415-431) is reported in 131 F. (2d) 909.

## JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 26, 1942. The petition for a writ of certiorari was filed on March 5, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTIONS PRESENTED

1. Whether the Act of the Legislature of the State of New York of February 27, 1931, authorized the Commissioners of the Sinking Fund of New York City to adopt the agreement between the United States and the City of New York binding the City to pay a proportionate share of the cost to the United States of the site for the new Post Office in New York City.

2. Whether the Act as interpreted by the court below contravened Article III, Section 16 of the Constitution of the State of New York.

3. Whether, apart from the Act, a valid and enforceable agreement existed between the United States and the City of New York for payment by the City of a proportionate share of the cost of the site in question.

4. Whether the City is estopped from claiming the absence of an enforceable agreement.

## CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Article III, Section 16 of the New York Constitution provides:

No private or local bill, which may be passed by the Legislature shall embrace more than one subject, and that shall be expressed in the title.

The Act of the Legislature of the State of New York, approved February 27, 1931 (N. Y. Sess. L. 1931, c. 39), provides:

AN ACT authorizing the City of New York to sell and convey to the United States government certain real property within the borough of Manhattan of such city.

Became a law February 27, 1931, with the approval of the Governor. Passed, on emergency message, by a two-thirds vote.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The city of New York is hereby authorized to sell and convey to the United States government such lands and premises and rights and easements therein located in the area bounded by Foley park; Park street; Pearl street; New street and Duane street in the borough of Manhattan, city of New York, owned by the city of New York as may be required by the United States government.

§ 2. Such sale and conveyance shall be on such conditions and such terms as in the judgment of the commissioners of the sinking fund shall be deemed proper.

§ 3. The land so transferred to be used by the United States government for the construction and erection of a new federal court house in and for the southern district of New York, in connection with an agreement between the city of New York and the United States government for the removal of the old federal building at the southerly end of City Hall park in the borough of Manhattan, and the acquisition of a new site

in said borough by the United States government for the construction and erection of a new postoffice building.

§ 4. This act shall take effect immediately.

#### STATEMENT

By deed of April 11, 1867, the City of New York, in consideration of the sum of \$500,000, conveyed to the United States a site in City Hall Park upon condition that the land and any building erected thereon be used only for a post office and courthouse, title to revert to the City upon breach of that condition (R. 34-37). The United States erected a building upon this site which was used as a post office and courthouse until October 30, 1937 (R. 19-20).

In 1930, after several years of negotiations, the City and the United States reached an agreement, described in the language of a comprehensive report by the City's comptroller (R. 200) as follows: that the Federal Government would (1) "convey to the City the old Federal Post Office building and site in City Hall Park"; (2) would "purchase from the City \* \* \* for the sum of \$2,450,000, the area described herein as a site for the new Federal court house" on Foley Square; and (3) would proceed "to acquire a new site for the Post Office on the property described as the Vesey street block, for the expense of which the City will repay to the Federal Government an amount in proportion to the area occupied by the present

Post Office building as compared with the total area of the new Post Office building site."

Proceeding upon the basis of this agreement (the existence and validity of which were sustained below but are here in issue), the United States paid the City \$2,450,000 for the Foley Square property and erected a new courthouse thereon, and paid \$5,056,246 for the Vesey Street property, upon which it erected a larger new post office building (R. 338-340, 344-345). In 1936, before the latter building was finished, Mayor La Guardia requested the Secretary of the Treasury to permit immediate demolition of the old Post Office building in City Hall Park (R. 330). He was advised that the Federal Government would convey the property to the City after the completion of the new building, upon payment by the City of its proportionate share of the cost of the Vesey Street site, to wit, \$4,336,985.79 (R. 331-333).<sup>1</sup> The Mayor replied that he was "shocked, disappointed and unhappy" to hear that the United States expected to be paid by the City (R. 334).<sup>2</sup> The City subsequently refused to pay, and this suit was instituted by the United States for specific performance of the contract.

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<sup>1</sup> It is stipulated that this amount is the proportion of the cost of the Vesey Street site which the area of the old City Hall park site bears to the area of the new Vesey Street site (R. 20).

<sup>2</sup> The Mayor incorrectly stated that the City Hall site had been *given* to the Federal Government in 1867 on condition that it be reconveyed when not used for the specified purposes (R. 334).

By stipulation (R. 377-381) the City was permitted, during the pendency of the suit, to tear down the building and use the site for park purposes. The stipulation provides that the City will not claim the discontinuance of the use of the property as a federal court house and post office to be a breach of the deed of 1867, and that in the event the United States is denied the relief prayed for in its complaint it shall be given one year to resume the use of the premises "for a post office and court house," or either of them (R. 380).<sup>3</sup> The old building was thereupon demolished, and the land is now being used by the City for park purposes (R. 417).

The City now contends that there was no agreement between it and the Federal Government, that the officials of the City who purported to make an agreement had failed to comply with the requirements of the City charter, that the New York statute of February 27, 1931, did not authorize the City to make the contract, and that, if it did, it violated Article III, Section 16, of the New York Constitution. A rather full statement is necessary in order that the facts pertinent to these issues may be understood.

As long ago as 1919 the old Federal Court House and Post Office building was regarded as inadequate

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<sup>3</sup> The stipulation provides that an appropriation or authorization by Congress for a building to be used for such purposes would be deemed a resumption of use during the one-year period.



quate (R. 62-63), and the United States contemplated the erection of a new building on its site (R. 20, 62-63). In that year, and again in 1921 and 1924, representatives of the City were duly authorized by the Board of Estimate and Apportionment to negotiate with the United States for the return of the Post Office site to the City and for a grant by the City in exchange therefor, wholly or in part, of another site or sites for a new Federal building or buildings (R. 62-74). In 1928 the Secretary of the Treasury wrote the Mayor asking whether the City would sell to the United States a site in the Civic Center for a Court House, stating that this would leave for further consideration the continued occupancy of the old Post Office site by a new Post Office building (R. 74-75). During that year, on several occasions, the City offered to donate a site in the Civic Center (Foley Square) in return for the site in City Hall Park (R. 79, 83-84, 90-92). The Treasury took the position that the United States could not give up the City Hall Park site without also obtaining a new site in the vicinity for a Post Office, and proposed that if the City could provide a new Post Office site the United States would be willing to purchase the new Court House site (R. 85-86, 93-95).

At this stage of the negotiations local civic organizations headed by the Merchants' Association suggested the formula finally agreed upon, namely, that the Government purchase the Civic Center site from the City, surrender the old Post Office

site to the City, and acquire the Vesey Street site (for a new Post Office) at an estimated cost of \$5,000,000 for the Vesey Street site, the cost to be divided between the City and the Government, in the ratio that the area of the old Post Office site bore to the area of the new Post Office site (R. 22, 98, 100-104).

Direct negotiations between the representatives of the United States and those of the City continued. On April 30, 1930, the Commissioner of Public Works of the City recommended to the Mayor that the City should pay \$3,750,000 for the old Post Office site and sell the Civic Center site to the United States for \$2,700,000 (R. 106). The Under Secretary of the Treasury was advised of this plan (R. 107), and on May 12, 1930, the Secretary wrote the Mayor suggesting the following modifications of the plan: (1) that the price of the Civic Center site be fixed at \$2,450,000, the value at which it had been appraised by the Real Estate Board's committee (R. 100-104) and (2) that the Vesey Street site be acquired by the United States under an agreement that the City would pay that proportion of the cost of the new site which the area of the old site bore to the area of the new site (R. 110).

As a result of the foregoing negotiations the following three letters were exchanged:

1. On June 6, 1930, the Mayor wrote to the Secretary (R. 112-113) that his letter of May 12,

1930, had received careful consideration by the members of the Board of Estimate and Apportionment in executive session and that the valuation of \$2,450,000 for the Civic Center site was acceptable to them; that the Mayor had been authorized to offer to pay the Federal Government the sum of \$3,750,000 for the old Post Office site and to sell to the Federal Government the Civic Center site for the sum of \$2,450,000; and that the alternative suggested by the Secretary in his letter of May 12, 1930, was also agreeable to the members of the Board, namely, that the City should bear that proportion of the cost of the new Vesey Street site which the area of the old site bore to the new.

2. The Secretary replied on June 12, 1930 (R. 114-115), accepting the alternative proposition contained in the Mayor's letter of June 6, 1930, namely, that the City should bear that proportion of the cost of the Vesey Street site that the old site bore to the new; and stating that the Government would proceed with the acquisition of the Vesey Street site in such manner as it found to be to its best interests, and that it would convey the old Post Office site to the City upon payment to the United States of the City's proportion of the cost of the Vesey Street site.

3. On December 6, 1930, the Secretary wrote to the Mayor (R. 122-124) affirming the basis on which the exchange of the old Post Office site

was to be effected, advising him that the Department was unsuccessful in its efforts to procure satisfactory proposals from the various owners for the sale of the parcels comprising the Vesey Street site, and expressing the opinion that part at least of those properties would have to be acquired by condemnation. He further suggested that while the matter was pending the Department desired a formal proposal for the sale to the United States of the site in the Civic Center for \$2,450,000.

The parties proceeded to confirm and perform the agreement. On June 25, 1930, the office of the Mayor issued a statement to the newspapers announcing that an agreement had been reached, and specifically stating that after a series of conferences in the executive sessions, the Board of Estimate had agreed upon the proposal. The letter of June 12, 1930, was set out in the statement and printed in the newspapers, and the proportionate cost of the Vesey Street site was set forth (R. 371-376). Congressional authorization to execute and perform the agreement was sought and obtained. Act of July 3, 1930, c. 846, 46 Stat. 860, 901. On January 21, 1931, the formal proposal for the sale of the Civic Center site to the United States was forwarded to the Secretary (R. 130-140).

In the meantime, the City procured the passage of the bill which, following an emergency message

from the Governor, became the Act of February 27, 1931, c. 39, N. Y. L. 1931. The Act authorized conveyance of the new court house site to the United States "in connection with an agreement between the city of New York and the United States government for the removal of the old federal building at the southerly end of City Hall park in the borough of Manhattan, and the acquisition of a new site in said borough by the United States government for the construction and erection of a new postoffice building." Representatives of the City, in urging the passage of the bill before the New York Legislature, pointed out that its purpose was to permit the Federal Government and the appropriate officials of the City to carry out the plan agreed upon for the demolition of the old Federal building located at the southerly end of City Hall Park (R. 145, 146). On March 19, 1931, the Assistant to the Mayor transmitted a copy of this bill to the Secretary (in the precise form in which it had been enacted), stating that it "is now a law, so that there is no longer any legal obstacle to the consummation of the agreement between the City and the Treasury Department" (R. 152).

On May 11, 1931, the City's proposal of January 21, 1931, for the sale of the Civic Center site was accepted by the United States (R. 157-159), and the acceptance was transmitted by the Mayor to the City Commissioners of the Sinking Fund (R. 174), who referred it to the City Comptroller for report

(R. 181). The Acting Comptroller then prepared and submitted to the Commissioners of the Sinking Fund a report dated June 26, 1931, which reviewed the entire negotiations, setting forth verbatim the letters of June 6, June 12, and December 6, 1930 (R. 181-214). The report characterized the correspondence as an agreement which included the City's obligation to pay to the United States a proportionate share of the cost of the Vesey Street site (R. 200). The resolution of the Board of Commissioners, adopted July 1, 1931 (R. 179-181, 202-214), recited the terms of the general agreement, including the obligation of the City to pay its proportionate share of the cost of the Vesey Street property (R. 202), and authorized the conveyance of the new Court House site for the sum of \$2,450,000, upon the condition that the United States vacate and surrender to the City the present Post Office site in City Hall Park pursuant to the provisions of the general agreement reached by the parties (R. 214). On July 7, 1931, the Assistant to the Mayor transmitted copies of the resolution to the Assistant Secretary of the Treasury (R. 216), to the Board of Estimate (R. 215), and to each member of the Board individually (R. 24). At the meeting of the Board on September 25, 1931, the resolution was ordered filed (R. 238).

On July 14, 1931, the Corporation Counsel of the City wrote to the Assistant Secretary of the Treasury enclosing a copy of the resolution of

the Commissioners of the Sinking Fund, and stated that the Commissioners deemed it advisable that the general agreement reached by the parties be reduced to writing (R. 230-231). A draft agreement was enclosed (R. 232-235). The draft provided that the United States should remove the old Post Office building and deliver to the City a good and marketable title to the site. On July 31, 1931 (R. 236-237), the Assistant Secretary of the Treasury advised the Corporation Counsel that with respect to the removal of the old Post Office building the agreement provided merely for the conveyance of the building and the site and suggested that removal be arranged by the City. He added that the United States could deliver a quitclaim deed only, which would be sufficient in view of the fact that the original conveyance from the city to the United States was only of a base or conditional fee.

After further correspondence and conferences (R. 253-264, 279-284), the Civic Center site was conveyed to the United States for a total consideration of \$2,450,000 which was paid to the City by the United States. In 1930, the United States proceeded to acquire the Vesey Street site by purchase and condemnation. Twenty-two parcels were purchased in 1931 and the remaining two parcels were acquired in condemnation proceedings in 1933 and 1934 at a total cost for all parcels of \$5,056,246 (R. 338-340). The United

States then proceeded to erect the new Post Office building upon the Vesey Street site which it occupied on or about September 31, 1937 (R. 344-345).

Then occurred the transactions referred to at pages 5-6, *supra*. After the United States had paid for the two new sites and constructed the two new buildings, the Mayor requested the United States to demolish the old building, but refused to pay the City's proportionate share of the cost of the Vesey Street site.

On these facts, the District Court found that, despite the looseness of the proceedings and the absence of a formal document, "if the complete picture is looked at, it is inconceivable that one would deny the existence of a solemn agreement between the United States and the City of New York" (R. 393, 398). The court further found, on the one disputed issue of fact, that the Board of Estimate and Apportionment did consider and approve the terms of the agreement, and that the agreement had been lawfully made on the part of the City (R. 399, 401, 406). He accordingly entered judgment for the United States without finding it necessary to pass on the other questions presented.<sup>4</sup>

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<sup>4</sup> The court found that the City was not liable for the cost of demolishing the old Post Office building, and accordingly deducted this amount from the City's liability to the United States (R. 404). The Government did not challenge this ruling.



The Circuit Court of Appeals also found that the parties had made an agreement (R. 426-428). Although it disagreed with the view of the court below that the approval of the Board of Estimate and Apportionment had been shown, it held that the Act of February 27, 1931, had manifested legislative approval of the agreement and thereby superseded the provision of the City charter requiring the approval of the Board (R. 429-431).

#### ARGUMENT

In this case the City is seeking to repudiate its obligations under the agreement with the United States after the United States has fully performed. If the City is successful, it will have obtained for itself the site of the old Post Office building without cost, and at the same time caused the United States to spend seven and one-half million dollars for other sites instead of building on a site which it already owned.<sup>5</sup> This indefensible result is attempted to be justified on the ground (1) that there never was an agreement, (2) that if there was an agreement between the Mayor and the United States it is unenforceable against the City, since it was not approved by the

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<sup>5</sup> Although the United States has the right, if it loses this case, to repossess the old Post Office site on condition that within a year it build, or decide to build, a new structure for court house or post office purposes, this right is of little value in view of the fact that the Government has just completed two large buildings for those purposes in the immediate vicinity.

Board of Estimate as required by the city charter, and (3) that the State law, which was passed at the behest of the City for the purpose of validating this very agreement (R. 135-146), is unconstitutional if it has that effect.

Whether there was an agreement between the City and United States is a question of fact which both lower courts have decided against the City (R. 393-398; 426-429). Since the City has not argued this point in its petition as an independent ground for certiorari, no necessity is perceived for discussing it here.<sup>6</sup>

We submit that the District Court correctly held that the agreement had been properly approved by the City, and that the Circuit Court of Appeals correctly held that, even if it had not been, any failure to comply with the city charter was cured by the Act of February 27, 1931. Furthermore, irrespective of the merits of the case, the questions as to the construction of the city charter, the conduct of the city Board of Estimate, and the meaning and validity under the State Constitution of a State law, are not of such general importance as to warrant review by this Court. Indeed, since only questions of state law are presented, a decision by this Court would not even be<sup>7</sup> controlling beyond the present controversy. See p. 24, *infra*.

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<sup>6</sup> Since the point is included in petitioner's "Questions Presented", we presume that petitioner desires to save the question if certiorari is granted on other grounds.

<sup>7</sup> On matters of state law this Court gives special weight to the judgment of the Circuit Court of Appeals which

1. Petitioner's claim that the contract is unenforceable against the City rests upon an alleged lack of approval by the Board of Estimate and Apportionment.\*

This contention is based solely upon the absence of any formal record manifesting the Board's approval. It was stipulated by the parties in this case (R. 22):

It was not the practice of the Board to have made a record of everything which took place in Executive Sessions, although at some Executive Sessions a stenographic record of some matters was made. Executive sessions could have been held without any record having been made of the fact that they were held. It was the practice of the Secretary of the Board not to include any record of anything that took place in Executive Sessions in the record of proceedings printed in the "City Record" and thereafter printed and bound. \* \* \*

Thus it was possible for the Board to have authorized the Mayor to enter into the agreement without any formal record being made.

The only direct evidence as to whether such authority was granted was the Mayor's definite state-

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includes the state in question, especially when, as here, members of that court have had "long experience in the jurisprudence of that state". *Helvering v. Stuart*, Nos. 49 and 48, decided November 16, 1942, pamphlet p. 5.

\* Unless dispensed with by the Act of February 27, 1931 (*infra*, pp. 19-21), such approval was required by Sec. 442 (a) of the Greater New York City Charter, in effect during 1930 and 1931.

ment, in his letter of June 6, 1930, to the Secretary of the Treasury, that the Board had carefully considered the matter in executive session and authorized him to make the offer on behalf of the City which the Secretary later accepted (R. 112). The Mayor's statement is corroborated by the report of the Acting Comptroller, who was a member of the Board (R. 182-183); by a newspaper article of June 25, 1930, stating that the Board had agreed to the proposal (R. 371, 376); and by the fact that when the Board was advised (R. 215) that the Commissioners of the Sinking Fund had by resolution approved the agreement (R. 202-214) it merely ordered the resolution filed (R. 24, 238).

The failure of any member of the Board to object to or register dissent from the Mayor's statement, or to oppose the agreement, obviously adds weight to the direct evidence that Board approval was obtained. In the absence of evidence to the contrary (which would presumably have been introduced if it existed), these facts fully support the finding of the District Court that the evidence "compels the inference" that the Board did approve the terms of the agreement (R. 406, 400).<sup>9</sup>

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<sup>9</sup> In his opinion Judge Clark stated on this point (R. 400): "First, it is noted that in his June 6th letter the Mayor said the members of the board had considered the matter in executive session and that the proportionate sharing-of-cost plan was 'agreeable' to the members. Second, it is pointed out that in all the subsequent publicity and discussion no member of the board ever raised his voice to dispute the Mayor's statements. If the board wished to act in camera,

2. The construction and validity of the Act of February 27, 1931, come into question only if the Court should find that the Board of Estimate did not approve the agreement. Even if the contract was not approved in accordance with the terms of the city charter, which is an act of the New York Legislature, the charter requirements could be superseded by a special legislative enactment.

The Act of February 27, 1931, dispensed with other requirements, and authorized the City to sell and convey to the United States the Civic Center site upon such terms and conditions as the Commissioners of the Sinking Fund should deem proper. Section 3 provided that the land so transferred should be used for the construction and erection of a new federal Court House "in connection with an agreement between the city of New York and the United States government for the removal of the old federal building at the southerly end of City Hall park in the borough of Manhattan, and the acquisition of a new site in said borough by the United States government for the construction and erection of a new postoffice

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as it could legally, there was no better reporter of what had transpired than the Mayor, who presided. The Mayor's report of what had happened, never questioned by any member, is satisfactory evidence of the Board's approval." We believe that the Circuit Court of Appeals mistakenly understood Judge Clark's decision on this point to have been based mainly upon a presumption of regularity rather than upon undisputed evidence.

building." Obviously, Section 3 of the Act would be mere surplusage unless it intended to approve or to authorize the Commissioners of the Sinking Fund to approve or adopt the agreement which had theretofore been entered into. No other agreement could have been meant, and the history of the Act (p. 11, *supra*) shows that its object was to legalize the agreement here assailed.

Indeed, the various officials of petitioner so treated it. When the United States through the Treasury Department accepted the proposal of the City to sell the Civic Center site, the Board of Commissioners of the Sinking Fund referred the matter to the Comptroller (R. 181), who submitted an exhaustive report to the Board of Commissioners setting forth the entire transaction involving the purchase of the Civic Center site, the surrender of the old Post Office site to the City and the purchase agreement respecting the Vesey Street site (R. 181-201). A resolution embodying the essential provisions of the offer by the City and the acceptance by the United States was adopted by the Commissioners (R. 214). A copy of this resolution was transmitted to the Board of Estimate (R. 215), who at their meeting on September 25, 1931, ordered it filed (R. 238). The record thus leaves no room for doubt that the Commissioners of the Sinking Fund adopted the conditions theretofore agreed upon in respect

of the acquisition by the City of the old Post Office site, and made such conditions a part of the sale of the Civic Center to the United States. It is immaterial whether the action of the Board be regarded as a ratification or as an adoption of the prior agreement. In either event, the prior negotiations which had resulted in the agreement were confirmed or adopted in a manner clearly authorized by the Act, and the City thereupon became legally obligated to fulfill its part of the undertaking.

3. There is no merit in petitioner's contention (Pet. pp. 9, 10, 13) that the Act, so construed, violates Article III, Section 16 of the New York Constitution, limiting bills to the single subject matter expressed in the title. It is settled that the purpose of Article III, Section 16 of the New York Constitution, and of similar provisions found in many other state constitutions, is to prevent the inclusion of incongruous and unrelated matter in the same measure and to guard against inadvertence, stealth, and fraud in legislation. *Posados v. Warner, Barnes & Co.*, 279 U. S. 340, 344; *Economic Power & Construction Co. v. City of Buffalo*, 195 N. Y. 286, 296-298. Hence, notwithstanding the constitutional "limitation of the subject-matter to one subject," a New York statute "may embrace the carrying out of that subject-matter in various objective ways, provided the objectives are naturally connected with the

subject-matter and the title could be said to apprise the reader of what may reasonably be expected to be found in the statute." *Burke v. Kern*, 287 N. Y. 203, 213 (1941).<sup>10</sup> Moreover, the constitutional provision permits a statute to contain any provision "germane," "incidental to," or "fairly and reasonably connected with" the purpose or object set forth in the title. *Matter of Petition of United States*, 96 N. Y. 227, 239-240; *Economic Power & Construction Co. v. City of Buffalo*, 195 N. Y. 286, 296; *Willis v. City of Rochester*, 219 N. Y. 427, 433; *City of New York v. Village of Lawrence*, 250 N. Y. 429, 446; *Richfield Oil Corp. v. City of Syracuse*, 287 N. Y. 232, 240-242.<sup>11</sup> Tested by these standards, the 1931 Act as interpreted by the court below is valid. It embraces but one subject, namely, the entire agreement between the United States and the City of New York; the conveyance of the Civic Center site to the United States is merely one part of that agreement, as is expressly recognized by Section 3 of the Act, and the entire agreement is undeniably

<sup>10</sup> An argument in that case similar to the one here advanced by petitioner found acceptance only by a dissenting minority, *id.* pp. 223-224.

<sup>11</sup> In this recent case, the New York Court of Appeals held that under a title mentioning public works, it was proper to include provisions for condemnation and special assessment, since "the problem of paying for public improvements is directly linked with that of the authority of a municipality to construct such improvements." The present situation would seem to be analogous.



“fairly and reasonably connected with” the sale of the Civic Center site.

4. The decision below can also be supported on the ground of estoppel, all the elements of which are clearly present.<sup>12</sup> The Board of Estimate, through its presiding officer and other qualified officials, represented to the Government that the Board had approved the agreement. The Government relied upon those representations and expended many millions of dollars in performing the contract. This was disadvantageous to the Government, for the old site was a desirable one for the construction of a new Post Office building and the government consented to the acquisition of a different site only at the insistence of petitioner’s officials.<sup>13</sup> Applicable New York precedents exist for estoppel in similar circumstances. *Moore v. Mayor*, 73 N. Y. 238, 245. It is only where there is a total lack of power in the City

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<sup>12</sup> The lower courts found it unnecessary to pass on this question.

<sup>13</sup> There can be but little doubt that the new Post Office would have been constructed on the old site had not the City agreed to bear most of the cost of the new site. The new Post Office building now has been constructed on a different site as has the new Court House building. The old site is no longer needed by the United States, and it is not possible to restore the United States to the position which it formerly occupied unless the title of the United States to the old Post Office site were relieved of any restrictions as to its use. (See pp. 6, 15 n., *supra*.) In that event, it would have a marketable value of \$7,000,000 (R. 102). It is, of course, obvious that petitioner would not agree to this modification, since its object is to retain the property for park purposes without paying for it.

that the doctrine of estoppel is inapplicable. *Moore v. Mayor*, *supra*, 245-248; cf. *City of Los Angeles v. Borax Consolidated*, 102 F. (2d) 52, 57, 58 (C. C. A. 9); 3 McQuillin, *Municipal Corporations* (2d ed. 1928) § § 1357, 1358.

5. The question is not one of general importance nor is there any dispute as to the applicable law. The court below, after carefully considering the charter of New York City and the applicable statutes and decisions of the New York courts, undertook to fashion therefrom the proper rule of New York law applicable to the instant case. Any review by this Court would necessarily be of the same character, and its decision on questions of New York law would not be controlling beyond the present controversy. The issuance of a writ of certiorari merely to ascertain the New York law is, we submit, not warranted where the ruling of both courts below upon the state law finds substantial support in state court decisions,<sup>14</sup> especially since the object of the petition is to have state legislation declared in violation of a state constitution.

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<sup>14</sup> If the court below had failed to apply New York law, reversal by this Court upon writ of certiorari presumably would be followed by a remand to the lower courts for ascertainment and application of the New York law. Cf. *Klaxon Co. v. Stentor Co.*, 313 U. S. 487, 498.

## CONCLUSION

The decision below is correct and presents no question of general importance. There is no conflict of decisions. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

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